HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 654 OF 2005.

Tannaz Timblo. ..Petitioner.

Versus.

Prashant Timblo. ..Respondent.

Shri. V. P. Sawant with Smt. Vilomee Shah i/b M/s. Shah & Sanghavi for the petitioner - wife.

Shri. Janak Dwarkadas with Shri. Zal Andhiyarujina and Smt. Mrunalini Deshmukh i/b DSK Legal for the respondent - husband.

ALONG WITH

CIVIL APPLICATION NO. 2451 OF 2005
AND
CIVIL APPLICATION NO. 890 OF 2005.

Prashant Timblo. ..Applicant.
Versus.
Tanaaz Timblo. ..Respondent.

CORAM: S.B.MHASE, J.

DATE : MAY 4, 2006.

P.C.

1. Heard.

2. This petition has been filed against the orders dated 29th November 2004, 10th December 2004 and 14th December 2004 passed by the Family Court, Bombay at Bandra in Interim Application No. 307 of 2004 in

M.J.Petition No. A-912 of 2004. The petition is pending for admission. In this petition the respondent - husband has filed civil applications bearing Nos. 2451 of 2005 and 890 of 2005.

3. By Civil Application No. 890 of 2005, the original respondent - applicant has prayed to issue appropriate writs and/or directions restraining the respondents- original petitioner Mrs. Tanaaz Timblo from continuing with or taking any steps and/or otherwise participating in the proceeding in any Court or Tribunal in the U.S.A. or in any other Court against the applicant - original respondent in respect of all or any dispute or difference arising out of or in connection with the matrimonial matters, arising out of or in relation to M.J.Petition No. A-921/2004 before the Family Court at Bandra, Mumbai. It is further prayed that appropriate orders and/or directions may be issued to restrain the original petitioner from continuing with or taking any steps in or otherwise participating in the proceeding being Docket No. 02D 3592 before the Middlesex Probate and Family Court in U.S.A.

4. By Civil Application No. 2451 of 2005 the original respondent - applicant has prayed that the appropriate orders or directions be issued requiring the

respondent -original petitioner to implement the order dated April 29, 2005 passed by this Court. Further, original respondent - applicant has prayed to issue appropriate writs and/or directions restraining the respondents- original petitioner Mrs. Tannz Timblo from continuing with or taking any steps and/or otherwise participating in the proceeding in any Court or Tribunal in the U.S.A. or in any other Court against the applicant - original respondent in respect of all or any dispute or difference arising out of or in connection with the matrimonial matters, arising out of or in relation to M.J.Petition No. A-921/2004 before the Family Court at Bandra, Mumbai. It is further prayed that by appropriate orders and/or directions the original petitioner be restrained from continuing with or taking any steps in or otherwise participating in the proceeding being Docket No. 02D 3592 before the Middlesex Probate and Family Court in U.S.A.

5. While civil application No. 2154 of 2005 was being heard, on 27th September 2005, Mr. Sawant learned counsel appearing on behalf of the respondent wife made certain statements and gave certain concessions. While recording the same, on that day, the Court passed following :

> "Mr. Sawant, the learned counsel for the respondent, states that the respondent will not proceed with the motion before the trial Court at Middlesex, U.S.A., without permission from this Court. The learned counsel for the respondent agrees to file an undertaking signed by the respondent in this Court to the above effect and a further statement whether she intends to proceed with the motion within a period of two weeks from today. It is, therefore, not necessary to consider the prayer for ad-interim relief made by the applicant at this stage."

6. Thus, it appears that in view of the statements made by the learned counsel, prayers as prayed were not considered by the learned Single Judge and civil application remained pending.

7. Surprisingly, inspite of the statements made to this Court to file an undertaking, the undertaking is not filed. Therefore, matter appeared on board on 24.3.2006 when learned counsel for the respondent - wife was directed to comply with the orders. However, learned counsel expressed his inability, stating that he was instructed by M/s. Shah & Sanghavi, Solicitors and at the time when the statements were made the constituted attorney of the original petitioner - Mrs. Phiroza Tapti was present. He further stated that the brief has been returned to the Solitors' firm and he has no control over the constituted attorney.

8. On last occasion, however, he submitted to the Court that he will see that the said constituted attorney of the respondent - wife will remain present and at that time appropriate orders may be passed. Therefore, the matter is placed today.

9. Mr. Sawant is present along with the officers of M/s. Shah & Sanghavi, Solicitors' firm. It is equally reported that the constituted attorney of the petitioner-wife is also present. However, Mr. Sawant expressed his inability to comply with the orders.

10. Mrs. Phiroza Tapti is present in the Court. I asked as to whether when the statements were made she was a constituted attorney of the petitioner -wife or not. She admits that at the time when the statements were made she was constituted attorney for the petitioner - wife. However, she further makes a statement, on instructions from his sister (petitioner - wife in the petition) for whom she was constituted attorney in the present matter, that she has not complied with the order of this Court dated 27.9.2005.

11. Thus, ultimately it transpires that in view of the statements made and recorded by this Court on 27.9.2005 this Court was precluded to proceed with the

matter and conveniently after getting the order, the order is disobeyed by the constituted attorney. May be as she states, on instructions of the petitioner wife. However, this also shows that the petitioner was aware of the statements made and she has instructed not to obey the statements made to this Court. None of the parties can be allowed to take this Court on ride like this. Thus, it is clear that the conduct of the original petitioner - wife is of such a nature that she instead of allowing the judicial proceeding to proceed in a lawful manner, obstructed it by making statements so as to preclude this Court from passing the lawful orders and thereafter she proceeded with the proceedings in a foreign Court contrary to the statements made in this Court. This conduct on the part of the petitioner - wife shows the total disregard to the Court and also want of faith in judicial system existing in this country.

12. Under these circumstances, it is inappropriate to entertain the petition. The petition is hereby rejected, since the petitioner wife has failed to comply with the order dated 27th September 2005.

13. In view of the disposal of the writ petition, above-mentioned both the civil applications stand disposed of.

14. At this stage, learned counsel Shri. Janak Dwarkadas appearing on behalf of the respondent - husband submits that it will be appropriate to direct the Family Court to dispose of the matrimonial proceeding as early as possible. Prayer appears to be genuine and appropriate in the facts and circumstances of the case. Therefore, Family Court, Bandra is directed to dispose of the above referred family court proceedings as early as possible, preferably within a period of three months from the date of receipt of this order.

(S.B.MHASE, J.)